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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|-----------------|-------------|----------------------|---------------------|------------------|
| 09/360,542      | 07/26/1999  | LUIS FELIPE CABRERA  | 2110                | 4320             |

7590 03/24/2004

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EXAMINER

LE, DIEU MINH T

| ART UNIT | PAPER NUMBER |
|----------|--------------|
|----------|--------------|

2114

19

DATE MAILED: 03/24/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

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|                              |                                      |                                       |  |
|------------------------------|--------------------------------------|---------------------------------------|--|
| <b>Office Action Summary</b> | <b>Application No.</b><br>09/360,542 | <b>Applicant(s)</b><br>CABRERA ET AL. |  |
|                              | <b>Examiner</b><br>Dieu-Minh Le      | <b>Art Unit</b><br>2114               |  |

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
  - If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
  - If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
  - Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☒ Responsive to communication(s) filed on 23 December 2003.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 56-95 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 56-95 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

**DETAILED ACTION**

1. This Office Action is in response to the amendment filed December 23, 2003 in application 09/360,542.
2. Claims 1-55 have been canceled and claims 56-95 have been added.
3. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless -

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

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4. Claims 56-70, 75-84, 86-92, and 95 are rejected under 35 U.S.C. § 102(e) as being anticipated by Perks (U.S. Patent 5,924,102).

As per claim 56:

Perks explicitly teaches:

- a computer system for backing up software stored persistently [abstract, col. 2, lines 19-21], comprising:
  - a software executable having an application program interface (*i.e.*, **API**) [col. 3, lines 43-44 for providing information of the software execution state [col. 3, lines 1-21]
  - a backup program for invoking the application program interface (*i.e.*, **API**) [col. 3, lines 43-44] for retrieving information of the software execution state [col. 3, lines 34-39];
  - a storage device for persistently storing [col. 3, lines 65-66 the information of the software execution state retrieved by the backup program on a medium [col. 3, lines 46-63].

As per claim 57:

Perks further explicitly teaches:

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- a backup device for persistently storing operating system files and system configuration data [col. 3, lines 10-21, lines 65-66 and col. 4, lines 12-19].

As per claim 58:

Perks further explicitly teaches:

- a restore program for restoring the software executable using the information of the software execution state persistently stored on the medium by the storage device [col. 3, lines 34-39 and col. 5, lines 30-35].

As per claim 59:

Perks further explicitly teaches:

- a restore process for restoring the select operating system files [col. 3, lines 10-17] using the system configuration data persistently stored by the backup device [col. 4, lines 34-42 and col. 5, lines 30-35].

As per claims 60-61:

Perks further explicitly teaches:

- the software executable comprises an application program [col. 3, lines 7-27];

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- the software executable comprises an operating system program [col. 3, lines 7-27].

As per claims 62-63:

Perks further explicitly teaches:

- the application programming interface (*i.e., API*) comprises a backup application programming interface for collecting (*i.e., identifying and maintaining*) information on the state of an executing program [col. 6, lines 8-23];
- the application programming interface (*i.e., API*) comprises a backup application programming interface for writing (*i.e., adding and modifying*) information on the state of an executing program to [col. 4, lines 34-35 and lines 44-45] the medium [col. 3, lines 52-54].

As per claims 64:

Perks further explicitly teaches:

- a computer readable medium having computer-executable components comprising the system of claim 56 [col. 7, line 12 through col. 8, line 18].

As per claim 65:

Perks explicitly teaches:

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- A method for backing up software of a computer system for subsequent restoration [abstract, col. 2, lines 1-7], comprising the steps of:
  - receiving information of the execution state of at least one program executing on the system [col. 3, lines 22-39]
  - persistently storing the information of the execution state of the at least one program [col. 3, lines 65-67];
  - receiving information of the system state [col. 1, lines 52-56] of at least one hardware device [col. 2, lines 45-50 and col. 3, lines 50-58];
  - persistently storing the information of the system state [col. 1, lines 52-56] of at least one hardware device [col. 5, lines 40-64].

As per claims 66-67:

Perks explicitly teaches:

- persistently storing select operating system files and system configuration data [col. 3, lines 7-21].
- receiving information of the execution state of at least one program executing on the system [col. 3, lines 22-39] comprises invoking an application programming interface [col. 1m lines 56-67] for retrieving information of the

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execution state of the at least one program executing on the system [col. 3, lines 60-64].

As per claim 68:

Perks explicitly teaches:

- the system state of at least one hardware device [col. 1, lines 52-56 and col. 3, lines 50-58] comprising receiving information of the system state of a hard disk configuration (*i.e., a critical file on user's hard disk [col. 3, line 57] and configuration files, setup files, and others used for recovery of a system failure, hard disk reformat, etc.. [col. 1, lines 51-57].*

As per claims 69, 70:

Perks explicitly teaches:

- writing (*i.e., adding and modifying*) [col. 4, line 34 and line 45] the information of the execution state of the at least one program to a removable medium [col. 5, lines 45-48];
- writing (*i.e., adding and modifying*) [col. 4, line 34 and line 45] the information of the execution state of the at least one hardware device to a removable medium [col. 5, lines 45-48];



- writing (*i.e., adding and modifying*) [col. 4, line 34 and line 45] the select operating system files [col. 3, lines 7-21] to a medium using a backup device [col. 5, lines 45-48].

As per claims 75, 78-79:

Perks explicitly teaches:

- receiving catalog information of unmodifiable files (*i.e., preventing from modifying and unregister files*) [col. 4, lines 21-22 and lines 51-56];

- writing (*i.e., adding and modifying*) [col. 4, line 34 and line 45] the received catalog information (*i.e., maintaining critical files list*) [col. 6, line 20] to a removable medium [col. 5, lines 45-48];

- writing (*i.e., adding and modifying*) [col. 4, line 34 and line 45] the received registry information [col. 4, lines 8-21] to a medium using a backup device [col. 5, lines 45-48].

As per claims 76-77:

Perks explicitly teaches:

- receiving registry information including system configuration data [col. 4, lines 8-21];

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- receiving registry information comprising invoking application programming interface (i.e., API) [col. 1, lines 58-65] for retrieving the registry information [col. 4, lines 8-21].

As per claims 80:

Perks further explicitly teaches:

- a computer readable medium having computer-executable components comprising the system of claim 65 [col. 7, line 12 through col. 8, line 18].

As per claim 81:

Perks explicitly teaches:

- A method for restoring software of a computer system [abstract, col. 2, lines 1-7], comprising:
  - retrieving information of a previous system state of at least one hardware device stored on a medium [col. 3, lines 34-37, lines 60-64 and col. 4, lines 30-33];
  - restoring the previous state of the at least one hardware device using the retrieved information of the previous state [col. 3, lines 34-37, lines 60-64 and col. 4, lines 30-33];

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- retrieving information of a previous system state of at least one program stored on a medium [col. 3, lines 34-37, lines 60-64 and col. 4, lines 30-33];
- restoring the previous state of the at least one program using the retrieved information of the previous state [col. 3, lines 34-37, lines 60-64 and col. 4, lines 30-33].

As per claim 82-84, 86-88, and 91-92:

Perks further explicitly teaches:

- executing a restore process for restoring the previous state of at least one hardware device [col. 3, lines 34-37, lines 60-64 and col. 4, lines 30-33];
- rebooting the computer system [col. 5, lines 19-25];
- executing a restore program for restoring the previous state of at least one program [col. 3, lines 34-37, lines 60-64 and col. 4, lines 30-33].
- retrieving information of a previous execution state of an operating system program [col. 3, lines 46-64 and col. 4, lines 23-34].
- retrieving information of a previous execution state of an application program [col. 3, lines 25-36 and lines 46-64 and col. 4, lines 23-34].

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As per claim 89-90:

Perks further explicitly teaches:

- the registry information including system configuration data [col. 4, lines 9-16];
- the catalog information including an indication of files that are unmodifiable (*i.e., preventing from modifying and unregister files*) [col. 4, lines 21-22 and lines 51-56].

As per claims 95:

Perks further explicitly teaches:

- a computer readable medium having computer-executable components comprising the system of claim 81 [col. 7, line 12 through col. 8, line 18].

5. Claims 71-72, 73-74, 85, 93-94 are rejected under 35 U.S.C. § 103(a) as being anticipated by Perks (U.S. Patent 5,924,102) in view of McGill, III et al. (US Patent 5,469,573 hereafter referred to as McGill).

As per claims 71,72:

Perks explicitly teaches:

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- storing select operating system file [col. 3, lines 7-21];
- writing (*i.e., adding and modifying*) [col. 4, line 34 and line 45] the select operating system files [col. 3, lines 7-21] to a medium using a backup device [col. 5, lines 45-48].

Perks does not disclose:

- writing a device driver for a backup device to a removable medium.

However, Perks discloses capability of:

- configuration files, setup files, and others used for recovery of a system failure, hard disk reformat, etc... [col. 1, lines 51-57].
- a critical file on user's hard disk [col. 3, line 57].

In addition, McGill substantial teaches the invention.

McGill teaches:

- A method for backing up and restoring a computer system [abstract, fig. 2, col. 1, lines 1-6] comprising:
  - writing device driver to a medium [col. 2, lines 43-47].

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Therefore, it would have been obvious to a person having ordinary skill in the art at the time of Applicant's invention first, to realize the Perks's configuration files, setup files, and others used for recovery of a system failure, hard disk reformat, and a critical file on user's hard disk as being the writing a device driver for a backup device to a removable medium as claim by Applicant. This is because all hardware or devices need to have a driver associated with it in order for it to communicating with the system manager and/or system operating system; second, one would apply the writing device driver to a medium feature as taught by McGill in conjunction with the information handling system as disclosed by Perks in order to enhance the system recovery and restoration process. One of ordinary skill in the art would have been motivated to do so to provide the data computer system, more specifically to a data backup, recovery, and restoration a mechanism to enhance data storage response time, data rebuilt process, data communication, and data consistency performance throughput.

As per claims 73-74:

Perks explicitly teaches:

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- A method for backing up software of a computer system for subsequent restoration [abstract, col. 2, lines 1-7], comprising the steps of:

Perks does not disclose:

- storing a recovery process and program.

However, Perks discloses capability of:

- a system failure restoration [col. 2, lines 22-24].

In addition, McGill substantial teaches the invention.

McGill teaches:

- A method for backing up and restoring a computer system [abstract, fig. 2, col. 1, lines 1-6] comprising:

- recovery application process and program [col. 5, lines 8-15].

Therefore, it would have been obvious to a person having ordinary skill in the art at the time of Applicant's invention first, to realize the Perks's a system failure restoration (i.e., configuration files, setup files, and others used for recovery of a system failure, hard disk reformat, and a critical file on user's hard disk) as being the storing a recovery

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process and program as claim by Applicant. This is because in order for the application or system to recover, the data files, device driver, including system operating system functionality need to be restored so that the entire computer system can function properly. That means a process must in place therein to support the computer operation; second, one would apply the recovery application process and program feature as taught by McGill in conjunction with the information handling system as disclosed by Perks in order to enhance the system recovery and restoration process. One of ordinary skill in the art would have been motivated to do so to provide the data computer system, more specifically to a data backup, recovery, and restoration a mechanism to enhance data storage response time, data rebuilt process, data communication, and data consistency performance throughput.

As per claim 85:

Perks explicitly teaches:

- A method for restoring software of a computer system [abstract, col. 2, lines 1-7].

Perks does not disclose limitation of:

- scanning a hard disk.



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However, Perks discloses capability of:

- configuration files, setup files, and others used for recovery of a system failure, hard disk reformat, etc...

[col. 1, lines 51-57].

- marking critical within the handling system [col. 5, line 5-11].

In addition, McGill substantial teaches the invention.

McGill teaches:

- A method for backing up and restoring a computer system [abstract, fig. 2, col. 1, lines 1-6] comprising:
  - initializing, formatting and partitioning hard disk device [col. 2, 50-54 and col. 7, lines 13-23].

Therefore, it would have been obvious to a person having ordinary skill in the art at the time of Applicant's invention to apply the initializing, formatting and partitioning hard disk device (i.e., scanning a hard disk) feature as taught by McGill in conjunction with the information handling system as disclosed by Perks in order to performing the hard disk system recovery and restoration process. One of ordinary skill in the art would have been motivated to do so to provide the data computer system, more specifically to a data backup, recovery, and

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restoration with a mechanism to ensure the hard disk's memory capacity is error free for its operation process.

As per claims 93-94:

Perks explicitly teaches:

- A method for restoring software of a computer system [abstract, col. 2, lines 1-7].

Perks does not disclose:

- retrieving a device driver for a backup device and installing device driver to make up the backup device.

However, Perks discloses capability of:

- configuration files, setup files, and others used for recovery of a system failure, hard disk reformat, etc... [col. 1, lines 51-57].
- a critical file on user's hard disk [col. 3, line 57].

In addition, McGill substantial teaches the invention.

McGill teaches:

- A method for backing up and restoring a computer system [abstract, fig. 2, col. 1, lines 1-6] comprising:
  - writing device driver to a medium [col. 2, lines 43-47].

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- **fully loaded and configuring device drivers** [col. 4, lines 27-29].

Therefore, it would have been obvious to a person having ordinary skill in the art at the time of Applicant's invention first, to realize the Perks's configuration files, setup files, and others used for recovery of a system failure, hard disk reformat, and a critical file on user's hard disk as being the writing a device driver for a backup device to a removable medium as claim by Applicant. This is because all hardware or devices need to have a driver associated with it in order for it to communicating with the system manager and/or system operating system; second, one would apply the **writing device driver to a medium and fully loaded and configuring device drivers** features as taught by McGill in conjunction with the information handling system as disclosed by Perks in order to enhance the system recovery and restoration process. One of ordinary skill in the art would have been motivated to do so to provide the data computer system, more specifically to a data backup, recovery, and restoration a mechanism to enhance data storage response time, data rebuilt process, data communication, and data consistency performance throughput.

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6. Applicant's arguments with respect to claims 56-95 have been considered but are moot in view of the new ground(s) of rejection.

7. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

8. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

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9. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Dieu-Minh Le whose telephone number is (703) 305-9408. The examiner can normally be reached on Monday-Thursday from 8:30 AM to 6:00 PM. The examiner can also be reached on alternate Fridays.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Robert Beausoliel, can be reached on (703)305-9713. The fax phone number for this Group is (703) 872-93069.

Any inquiry of a general nature or relating to the status of this application should be directed to the Group receptionist whose telephone number is (703) 305-3900.

  
**DIEU-MINH THAI LE**  
**PRIMARY EXAMINER**  
**ART UNIT 2114**

DML

3/18/04